

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and among **Michael DiPirro**, a California citizen; **Indium Corporation of America**, a New York corporation (“Indium”) as of August 23, 1999 (the “Effective Date”). The parties agree to the following terms and conditions:

### WHEREAS:

A. DiPirro is an individual residing in San Francisco, California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

B. Indium is a company that manufactures and distributes solder alloys and other products containing lead and cadmium, substances known to the State of California to cause cancer and birth defects (or other reproductive harm).

C. A list of the products containing cadmium which are covered by this Agreement is provided in Exhibit A (the “Products”). The Products, or some of them, have been manufactured, distributed or sold by Indium for use in California.

D. On September 15, 1998, DiPirro first served Indium and certain public enforcement agencies with a document entitled “60-Day Notice” which provided such public enforcers with notice that Indium was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals, namely lead.

E. On December 17, 1998, Michael DiPirro filed a complaint entitled Michael DiPirro v. Indium Corporation of America et al. (No. H204950-4) in the Alameda Superior Court, naming Indium as defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed without adequate warnings regarding cadmium contained in certain solder products.

F. On or about June 21, 1999, DiPirro and Indium entered into a settlement agreement with respect to products Indium sells in California which contain lead. The Court entered judgment based on this settlement agreement on or about July 12, 1999.

G. On or about June 22, 1999, DiPirro first served Indium and certain public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” which provided such public enforcers with notice that Indium was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals, namely lead and cadmium.

H. Indium has already voluntarily instituted procedures regarding warnings on products it sells in California containing cadmium. Among other things, it has instituted new warning label procedures, has been sending certified letters to each of its customers of solder bars and solder research kits which contain cadmium that advises them to transfer the appropriate toxic warnings to their students or customers, if any, and has been including an insert into every shipment containing solder bars containing cadmium sold in California which advises the customer to transfer the requisite toxic warnings to downstream users of the bars, if any.

I. Indium at all times has denied the material factual and legal allegations contained in the 60-Day Notice, the Complaint, and the Supplemental 60-Day Notice of Violation. Nothing in this Agreement shall be construed as an admission by Indium of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Indium of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Indium under this Agreement.

**NOW THEREFORE, DiPIRRO AND INDIUM AGREE, AS FOLLOWS:**

1. **Product Warnings.** Indium shall begin to revise its health hazard warnings for its Products to provide the language set forth in the section 1.1 below. Subject to section 10 below, beginning on September 1, 1999, Indium agrees that it will not knowingly ship (or cause to be shipped) any Products containing cadmium for sale in the State of California unless such Products comply with section 1.1 or 1.2 below, whichever provision is applicable:

1.1 All Products containing cadmium (other than those referenced in section 1.2) shall bear the following warning statement on the Product and/or the immediate container for the Product:

**“WARNING: This product contains cadmium, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)”;**

or

**“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)”**

The display of the warning statement shall be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to an individual prior to exposure.

1.2 For solder bars containing cadmium and any other Product containing cadmium for which it is essentially impracticable to place a warning on the Product and/or the immediate container for the Product, the Products shall contain warning language identical to

section 1.1 above, on the outside and inside of each package containing one or more solder bars.

**2. MSDS Revisions.** Indium agrees to revise the "Health Hazard" section on each Material Safety Data Sheet ("MSDS") pertaining to each of the Products as follows: if any such MSDS includes a section or line item on "Proposition 65" or "California Proposition 65," that section or line item shall include the applicable warning language set forth in section 1.1 of this Agreement. Indium agrees to distribute any accordingly revised MSDSs in the normal course of business on or before September 15, 1999.

**3. Payment Pursuant To Health & Safety Code 525249.7(b).** In consideration of Indium's voluntary investigation of its own practices regarding products which may contain Proposition 65-listed chemicals and voluntary institution of procedures regarding its products it sells in California which contain cadmium, Indium shall pay no civil penalty pursuant to Health & Safety Code §25249.7(b).

**4. Reimbursement Of Fees And Costs.** Within 10 calendar days of the Effective Date of the Agreement, Indium shall reimburse DiPirro for his investigation fees and costs, expert fees and costs, attorneys' fees and costs, and any other costs incurred as a result of investigating, bringing this matter to the parties' attention, litigating and negotiating a settlement in the public interest, the amounts of which total \$1,750. Indium shall make such \$1,750 payment to the "Chanler Law Group".

**5. DiPirro's Release.** DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Indium and its distributors, wholesalers, retailers, customers, owners, operators, lessors, lessees, or users of the Products, as well as any of its or their directors, officers, employees, affiliates, successors and assigns, arising from any matters, acts, omissions, events, conduct, or occurrences at any time prior to the date of this Agreement, including without limitation any and all causes of action arising under Proposition 65 or the Business & Profession Code §17200 et seq. regarding any alleged failure to warn about exposure to cadmium.

**6. Indium's Release.** Indium, by this Agreement, on behalf of itself, its agents, representatives, attorneys, and assigns, waives all rights to institute any form of legal action against DiPirro and his attorneys or representatives, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against DiPirro arising from any matters, acts, omissions, events, conduct, or occurrences at any time prior to the date of this Agreement, including without limitation any and all causes of action arising from DiPirro's seeking enforcement of Proposition 65 or Business & Profession Code §17200 et seq. against Indium.

**7. Severability.** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

**8. Attorney's Fees.** In the event that a dispute arises with respect to any provision of this Agreement which would be required under Proposition 65, namely, sections 1 and 4, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees in enforcing such provision(s).

**9. Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

**10. Changed Circumstances.**

**10.1** The Parties acknowledge that the warning-statement language of section 1.1 above is based upon the regulatory "safe harbor" language, set out in the California Code of Regulations, Title 22, Article 6. In the event that such safe-harbor requirements are amended or otherwise changed, and if the language of section 1.1 above no longer satisfy any such new requirements, language substantially similar to such new safe-harbor requirements shall be used in lieu of that of section 1.1; and Indium shall not be in breach of this Agreement or in violation of Proposition 65 unless it fails to comport with such new language within one hundred and twenty (120) days of the effective date of such new safe-harbor requirements.

**10.2** In the event that Proposition 65 is repealed altogether or is otherwise rendered inapplicable by reason of law generally, or as to Indium and/or the Products specifically, Indium shall have no further obligations under this Agreement with respect to, and to the extent that, it and/or the Products are so affected.

**11. Notices.** All correspondence to Michael DiPirro shall be mailed to:

Clifford A. Chanler  
Chanler Law Group  
Magnolia Lane (off Huckleberry Hill)  
New Canaan, CT 06840-3801

All correspondence to Indium shall be mailed to:

Greg Evans  
Indium Corporation of America  
1676 Lincoln Avenue  
P.O. Box 269  
Utica, NY 13503-0269

*with copies to:*

Michael Stephens, Esq.  
Kernan and Kernan, P.C.  
Suite 600  
258 Genesee Street #10  
Utica, NY 13502-4691

Andrew G. Giacomini, Esq.  
Garner K. Weng, Esq.  
Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP  
333 Market Street, 23rd Floor  
San Francisco, CA 94105-2173

12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

13. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: 9/30/99

DATE: 31 August 99

Michael DiPirro  
Michael DiPirro

Greg Evans  
Greg Evans, on behalf of  
Indium Corporation of America

# **Exhibit A**

## EXHIBIT A

Bar Solder  
Solder Wire  
Solder Paste  
Preforms  
Ribbon  
Spheres  
Foil  
Ingot  
Research Kits (if containing a product containing cadmium)  
Miscellaneous forms of alloys (if containing cadmium)